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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

May 10, 1999

EX PARTE

The Honorable William E. Kennard
Chairman
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *SBC Communications Inc. and Ameritech Corporation*
(CC Dkt. No. 98-141)

Dear Chairman Kennard:

On behalf of Sprint Communications Company L.P., I am writing to apprise you of a grave defect in Ameritech's submission of documents to the FCC. Based upon the available facts, it appears that Ameritech chose to withhold from production numerous documents directly relevant and responsive to the Commission's public interest analysis and its corresponding demand for production. These documents also appear to directly contradict factual representations made by the merger parties to the FCC regarding material issues of fact. There is also evidence of comparable deficiencies in SBC's document submission to the Commission. Sprint hereby submits the results of its investigation and respectfully requests that the Commission further pursue this matter. Absent remedial action, the Commission will not have a full record upon which to accurately or lawfully consider the pending application in accordance with the fundamental requirements of the Administrative Procedure Act.

The problem was revealed only through a review of the Comments filed by the Attorneys General of Indiana, Michigan, Missouri and Wisconsin and accompanying Report of Gregory L. Rosston and Matthew G. Mercurio (collectively, "Report"). That Report relied upon documents submitted to the Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvements Act to correctly conclude that the proposed merger will have a significant anticompetitive effect.

Importantly, more than half of the documents cited by the state Attorneys General -- documents that were judged to be the most

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compelling, relevant, and damaging to the merger parties' claims -- were not submitted to the Commission, notwithstanding the fact that these documents, as demonstrated below, were directly responsive to questions posed to Ameritech by the Commission in its January 7, 1999 request for documentary material. These omissions cannot be viewed as inadvertent.¹ Out of the 16 "AIT" citations contained in the Report, Ameritech's own index reveals that nine were not produced to the FCC.² Moreover, a comparison of the content of the omitted documents to the FCC's document requests demonstrates that these omitted documents were directly responsive to the particular questions posed by the FCC.

One of the most important competitive concerns raised by the proposed merger involves the loss of competition between the merging parties. Commenters in the proceeding had pointed to substantial public evidence that Ameritech was prepared to vigorously challenge SBC's local monopoly markets prior to the merger agreement. Ameritech in response has insisted that its out-of-region entry efforts were limited and unsuccessful and were terminated for reasons other than the merger. In an effort to better understand the facts, the Common Carrier Bureau issued a demand for document production requiring Ameritech to "provide all documents in [its] possession relating to any pre-merger plans and considerations by Ameritech after February 8, 1996 to provide local exchange, exchange access, or interLATA service outside its current region." FCC

¹ Indeed, counsel for Ameritech has informally confirmed that the majority of the documents cited in the Report, while submitted to the Department, were deliberately withheld from the FCC.

² Documents submitted to the Justice Department by Ameritech were identified by an "AIT" or "AC" prefix, while documents submitted to the Commission were identified by an "ACFCC" prefix. Ameritech Narrative at 1 n.1 (Feb. 2, 1999). The Report references the following AIT citations, which did not appear on Ameritech's index of documents produced to the FCC: AIT 0156834 (Project Gateway Chronology, March 18, 1998); AIT 0167731 (e-mail regarding termination of Project Gateway); AIT 0266849 (Project Green Test Market Proposal); AIT 0287981 (presentation slide on Managed Local Access); AIT 0291312 (marketing plan for Managed Local Access, May 5, 1998); AIT 0291534 (Ameritech GlobalDesk Managed Local Access Building Blocks for Better Customer Solutions, undated); AIT 0434476 (Ameritech Full Products and Services (St. Louis, MO), Full Service Workbook, January 26, 1998); AIT 0609588 (Background Qs & As, Project Gateway, draft); AIT 0609595 (Background Qs & As, Project Gateway).

William E. Kennard
May 10, 1999
Page 3

Request for Documentary Material at 2, Question 3 (Jan. 7, 1999). While the FCC staff and Ameritech negotiated some clarifying language to this request, it remained unchanged in all relevant aspects here.³

In spite of this legal obligation, Ameritech decided not to produce several key documents relating to both these initiatives. While Sprint's information is of course limited to only that disclosed in the Attorneys General's Report, the following examples are conclusive evidence of the incompleteness of Ameritech's submission. And in each case, the withheld document contradicts Ameritech's public portrayal of its out-of-region entry plans.

For example, Ameritech contends in its Application that its St. Louis "Project Gateway" was not terminated because of the merger, but rather due to numerous problems that had surfaced during testing, which had not been resolved by the time the merger was announced. Public Interest Statement at 71.⁴ Yet the internal e-

³ The FCC supplemented this request with a particular request in subsection (b) that Ameritech provide "[a]ll documents regarding Ameritech's possible provision of facilities-based . . . out-of-region local exchange, exchange access, or interLATA service. Please include any documents associated with Ameritech's Managed Local Access offering." In response, Ameritech proposed several clarifications of this request, including "[w]ith respect to subsections (b) and (c), [that the FCC] limit the information and documents to be provided to that which was produced to DOJ (which will include discussions of Project Gateway, Managed Local Access (MLA)), " as well as "[w]ith respect to subsection (b), [that the FCC agree that] the language of the first sentence should remain the same and the second sentence should be deleted." Ameritech Narrative at 7. However, Ameritech agreed that "any documents regarding facilities based provision in the context of MLA will be produced by Ameritech. As a further point of clarification, FCC staff notes that the first sentence should be read to include any documents associated with the provision of service on a resale basis where the document indicates that the ultimate goal was to provide service on a facilities-based basis." Id.

⁴ Ameritech provided a veritable laundry list of reasons why Project Gateway was on hold, ranging from unattractive financial projections and billing and operational problems, to Ameritech's limited resources and the failure of competitors to offer bundled wireless packages. Public Interest Statement at 71. While Ameritech mentioned that "uncertainties created by

William E. Kennard
May 10, 1999
Page 4

mail produced to the Justice Department reveals that the merger was the primary consideration in Ameritech's decision to delay its entry into the St. Louis and surrounding markets: "'we are evaluating whether it makes sense to move forward [with the St. Louis/Project Gateway entry plans] . . . but I'm sure most have interpreted this as full stop. The reason for the evaluation, as Herb discussed in St. Louis is in light of the merger, we have to make sure we look at what a potential buyer might want and how they might approach the market -- so we're evaluating the launch.'" Report at 15 n.17 (citing AIT 0167731).

Similarly, Ameritech has portrayed its Managed Local Access initiative as an abysmal failure, claiming it had only one test customer and no national coverage. See Public Interest Statement at 60-61; Ameritech Narrative at 11-12. Again, documents produced to the Justice Department, but purposefully omitted from the FCC production, show otherwise. The Report discusses, for example, AIT 0291534 -- a presentation entitled "Ameritech GlobalDesk Managed Local Access Building Blocks for Better Customer Solutions," which states "'We deliver truly national coverage' and goes on to discuss the states where Ameritech can provide service. The document also claims that Ameritech is providing managed service to 24 customers and touts the company as 'the most aggressive RBOC supporting national local exchange.'" Report at 42 (additional internal quotes omitted). Moreover, several key customer prospects were in the "sales process." Id. at 41 (citing and describing AIT 0287981, a slide indicating that "'[s]ince February, CBS [Custom Business Services] has gained valuable MLA experience.' The slide goes on to state that 632 lines had been seamlessly migrated and more MLA deals were in the works."). These documents appear to describe -- in dramatic contrast to the public advocacy of Ameritech -- a vibrantly growing effort to compete out-of-region, an effort that would not have been terminated due to lack of interest, but rather stifled to accommodate the proposed merger.

Sprint cannot conceive that exclusion of these documents could constitute a reasonable construction of the FCC's request. While Sprint does not make this filing lightly, the fact remains that Ameritech demonstrably failed to provide documents that were directly responsive to FCC requests. Moreover, the missing documents were quite obviously discerned by state antitrust

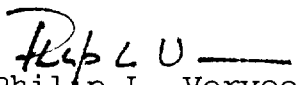
the planned merger with SBC" were a consideration, it downplayed these "uncertainties." Id. at 72. Indeed, Ameritech blamed other unresolved problems, creating the impression that its decision to terminate Project Gateway was unrelated to its decision to merge with SBC.

William E. Kennard
May 10, 1999
Page 5

officials to be among the most relevant and most inculpatory to the merging parties. Because these facts came to light only as a result of the Attorneys General's Report, it is not possible to determine whether comparable documents were withheld by Ameritech on other factual issues or whether SBC similarly decided not to produce relevant documents to the FCC. Indeed, the only information available with respect to SBC's document submission is equally disturbing: the one SBC document cited by the Report, a customer survey regarding one-stop shopping, appears directly relevant to the FCC's public interest inquiry but yet was not produced by SBC to the FCC.

It is imperative that Ameritech and SBC be required to explain and defend what basis, if any, they relied upon to omit these clearly responsive documents. Moreover, the FCC's record is a *fortiori* incomplete and the Commission must now undertake to secure an accurate record. As discussed above, the systematic and pervasive withholding of documents that is in evidence here implicates the entire record on the full set of factual issues raised by the merger. Sprint respectfully requests that the Commission take all appropriate measures, including a full investigation of the Applicants' document production efforts, supplemental, corrective document submissions by the Applicants, factual hearings to the extent necessary to resolve the issues, and appropriate sanctions.

Respectfully submitted,


Philip L. Verveer

cc: Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Michael K. Powell
Commissioner Gloria Tristani
Attached service list

⁵ Counsel for SBC has informally confirmed with counsel for Sprint that SBC did not produce this document to the FCC.

CERTIFICATE OF SERVICE

I, Trisha McLean, do hereby certify that on this 10th day of May 1999, copies of the attached *ex parte* in CC Dkt. No. 98-141 were served by first class mail, postage prepaid, or hand delivered as indicated, on the following parties:

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